Space Mark, Inc. *and* International Brotherhood of Electrical Workers, Local 1547, AFL–CIO, Petitioner. Case 19–RC–13442

July 21, 1998

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN AND BRAME

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in a mail ballot election held in September 1997, and the attached hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 6 for and 6 against the Petitioner, with 2 determinative challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings and recommendations.[1]

DIRECTION

IT IS DIRECTED that the Regional Director for Region 19 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Charles Jones Jr. and Dewayne Claar, serve on the parties a revised tally of ballots, and issue the appropriate certification.

[1] The hearing officer found, and we agree, that high voltage electrician (or lineman) Charles Jones Jr. shares a sufficient community of interest with the production power plant employees to warrant his inclusion in the bargaining unit. The parties' stipulated unit description does not specifically include or exclude Jones' job classification. Under these circumstances, the Board finds that the intent of the parties is unclear and that the stipulated unit is ambiguous. See *R. H. Peters Chevrolet*, 303 NLRB 791 (1991), and *Lear Siegler*, 287 NLRB 372 (1987). It is therefore necessary to apply a community of interest test to determine whether employees in the disputed classification belong in the unit. In this regard, although not mentioned by the hearing officer, it is undisputed that another employee classified as a high voltage electrician (John Lally) is properly included in the bargaining unit. Lally's inclusion in the unit provides further support for the hearing officer's finding that Jones shares a community of interest with unit employees.

APPENDIX

HEARING OFFICER'S REPORT ON CHALLENGED BALLOTS AND RECOMMENDATION

Pursuant to a Stipulated Election Agreement approved by the Regional Director on August 8, 1997, an election by secret mail ballot was conducted with a ballot count on September 30, 1997, in the following unit of employees:

> All production power plant employees employed by the Employer at its Adak, Alaska, operation, but excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees.

The tally of ballots served on the parties at the conclusion of the election set forth the following results:

Approximate number of eligible voters	17
Void ballots	1
Votes cast for Petitioner	6
Votes cast against participating labor organization	6
Valid votes counted	12
Challenged ballots	2
Valid votes counted plus challenged ballots	14

The challenged ballots were sufficient in number to affect the results of the election. No objections to the election were filed.

Pursuant to a report on challenged ballots and notice of hearing issued by the Acting Regional Director on October 20, 1997, a hearing was conducted before me on November 5, 18, and 20, 1997. All parties were afforded full opportunity to present and to cross-examine witnesses, and to offer documentary evidence. Both parties filed posthearing briefs, which were fully considered.

I. CHARLES JONES JR.

The ballot cast by Charles Jones Jr. was challenged by the Employer on the grounds that he was not in the bargaining unit, and that he was not employed in the power plant.

The Employer provides maintenance services at the former U.S. Navy base on Adak Island in the Aleutian Islands. The unit involved in this proceeding is the group of employees operating the diesel plant which provides electrical power to the island Ron Erbey, the power plant foreman, testified that he is in charge of 18 employees in all: 2 high voltage electricians or linemen, Carl Clemens and Charles Jones Jr.; and 16 power plant mechanics and operators. Erbey testified that the power plant employees are scheduled in shifts, working 24 hours per day, 7 days per week. The two linemen workday shift, from 7 a.m. to 4 p.m., with a 30-minute lunch period.

Erbey testified that each morning he receives his daily work orders from his supervisor, Operations and Maintenance Superintendent Terry Wilkes. Erbey then takes all the work orders to the power plant, and he distributes them to the power plant employees and to the linemen. Clemens and Jones, thus, report to the power plant at the start of each day and receive their work orders. They then normally go out into the field to perform their work orders, on the power lines, transformers, and related aspects of the electrical distribution system. Erbey stated that on one recent occasion, there was a scheduled outage at the power plant, and the linemen, along with other maintenance employees such as carpenters, came in to the plant to perform work.

Erbey testified that the linemen work with a bucket truck and other high voltage equipment such as ''hot sticks'' in their work, and that their equipment is stored in a line shack, about a mile and a half from the power plant. Erbey testified that both the lineman and the power plant employees eat their breakfast together in the same company cafeteria. On-duty power plant employees usually eat in the plant in a breakroom, since it takes too much time to go to the cafeteria. All employees typically reside in single-family residences, with one employee per unit. (While it was oper-

ational as a Naval base, Adak housed over 3000 sailors plus dependents. At the present time, there are about 175 Space Mark employees in all working there, so there is ample housing for the few people there.)

Erbey stated that if any emergencies arise he has the right to initially approve necessary overtime for the linemen, and for the power plant employees as well, subject to review by Wilkes. Erbey also approves vacation time for the linemen and the power plant employees.

Erbey stated that when the linemen are working on electrical lines they have radio communications with the plant controllers, so that the plant employees can open and close circuits to allow the linemen to work safely on the deenergized lines.

Erbey also testified that all Space Mark employees share common fringe benefits, such as the same 401(k) plan, and the same health and welfare benefits plan. All employees similarly have the same vacation and sick leave benefits.

Stanley Syta, the Employer's operations manager and deputy project manager, testified that he supervises about 92 to 95 employees in all, engaged in the utilities, the water and wastewater plant, facilities maintenance, and communications, and electronics services on the island. Syta testified that the maintenance employees include two interior electricians, performing low-voltage maintenance work within the building and housing interiors on the island. Those interior electricians are supervised by maintenance foreman, Paul Blakesley. Syta testified that the linemen and the interior electricians rate of pay is contained within the same wage determination from U.S. Department of Labor, and that the rate is $22/hour. The power plant employees' pay rate under their wage determination is $21.71/hour.

Employer Attorney Camille Torres contended, in her brief, that Jones lacks sufficient community of interest with the power plant employees, and that the challenge to his ballot should be sustained. Torres cited *Overnite Transportation Co.*, 322 NLRB 347 (1996), reconsideration denied 322 NLRB 723 (1996), in support of her position. In *Overnite*, the Board initially overruled the Regional Director and found that mechanics should not be included in a unit with drivers and dock employees, based on findings that the mechanics did not have interchange of work with other employees, lacked common skills and training, and lacked common supervision. The employer, in its motion for reconsideration, contended that the Board had acted inconsistently in unit determinations at several terminals located around the United States, sometimes including mechanics with units of drivers and dockworkers, and sometimes excluding them. In denying the motion for reconsideration, the Board noted that its duty is to determine ''an appropriate unit,'' not necessarily the most appropriate unit.

A multitude of factors must be examined in evaluating community of interest determinations, including degree of functional integration, common supervision, nature of employee skills and functions, interchangeability and contact among employees, work situs, general working conditions, and fringe benefits.

An examination of Jones' work situation, as set forth in the testimony of Erbey and Syta, shows that the work of the linemen, including Jones, is functionally integrated with the power plant. In addition, Jones has common supervision with the power plant employees, by Ron Erbey. The skills of the linemen are different in nature from the skills employed by the power plant operators and mechanics, but they are all engaged in the production and distribution of power from the plant out through the system. It appears that there is little interchangeability between the linemen and the plant employees, but a regular coordination of work, with the linemen in regular radio contact with the operators to allow safe work on the lines and the system. With respect to work situs, it is clear that the linemen report to the plant at the start of the day to receive their work orders before going into the field to perform their work. The linemen and the plant employees, along with all the employees on the island, share common company working conditions and fringe benefits.

In the examination of community of interest factors, the Board has found that employees who share some, but not all, factors can be placed together. In *Berea Publishing Co.*, 140 NLRB 516 (1963), the Board found that employees in the publisher's composing room and art production department should be combined in a single unit because both departments prepared copy for publication, and copy prepared in the composing room was then utilized in the art production department, skills of employees were similar, and there was a small plant where employees shared the same working conditions and the same overall supervision. In *Harrah's Illinois Corp.*, 319 NLRB 749 (1995), the Board held that a unit combining maintenance employees and heavy cleaning employees was appropriate, based on their common supervision and frequent job interaction. In *Burns & Roe Services Corp.*, 313 NLRB 1307 (1994), the Board ruled that a unit of electrical department employees was appropriate, rather than the overall maintenance department unit which the employer had urged as appropriate. In *Burns & Roe*, the Board found that the electrical employees were in a separate department, were separately supervised, were highly skilled, and were performing work typically done by electrical craft employees.

Hence, in examining the factors involved in a community of interest finding, I conclude that lineman Charles Jones Jr. shares a sufficient community of interest with the production power plant employees to warrant his inclusion in the bargaining unit, and I recommend that his ballot be opened and counted.

II. DEWAYNE CLAAR

The Employer challenged Claar's mail ballot on the grounds that he had submitted two ballots. At the hearing, Claar testified that he was working at his post on Adak when the mail ballots were sent out. While speaking to his wife at their home in Utah, Claar's wife told him that she had received his mail ballot there. Claar stated that since he has long worked at remote locations, he has given his wife a general power of attorney to sign for him in all legal matters. Claar indicated that he feared that his wife would be unable to mail the ballot kit from Utah to Adak in time for him to mark his ballot and get it back to the Anchorage Resident Office by the deadline, so he instructed his wife in how he wanted to vote, and he told her to sign his name, as she routinely does in other matters.

Claar sent a letter to the Anchorage Resident Office explaining what had occurred. In it, Claar wrote that he had told his wife to vote the initial ballot, sent to his Utah home, and that he thought that the Employer had erred in providing his Utah address as the place to send his ballot, rather than

having his ballot kit sent originally to his Adak location. This original mail ballot was received in the Anchorage Resident Office on September 18, 1997.

Claar also requested that the Anchorage Resident Office send out a duplicate mail ballot kit to him at his address on Adak. This ballot was received in the Anchorage Resident Office on September 22, 1997.

The first ballot, the one signed by Claar's wife, was voided at the ballot count, by agreement of the parties. The second ballot, the duplicate sent to Claar on Adak, was challenged by the Employer, on the grounds that it was a second ballot from Claar, and that the Board's Manual specifies that in the instance of two ballots being received from the same voter, only the first ballot received should be counted.

At the hearing, and in their posthearing briefs, the Employer contended that neither of the Claar ballots should be opened and counted, while the Petitioner contended that the second ballot should be opened and counted. The Employer correctly noted that the NLRB Casehandling Manual, section 11336.4, provides that:

> [I]n the event both the original and the duplicate envelopes are received from the employee to whom the duplicate was mailed, only the ballot in the envelope having the earliest postmark should be counted. In the event postmarks are not discernible, only the envelope bearing the earliest date stamp should be counted. In the event two ballots are received in one envelope the voter's ballots should be challenged. If the parties agree, only one of the ballots may be counted providing secrecy can be maintained.

The Employer contends that this section of the Casehandling Manual requires that Claar's ballot should not be counted, because it was the second ballot received.

There was no dispute regarding the facts of what had occurred with the two ballots involving Claar. Both Claar and Erbey testified that Claar was continuously on Adak from early August to November. Thus, Claar clearly could not have completed the first ballot, which was completed and signed by his wife, based on her honest belief that she could do so because of the power of attorney.

In reviewing the facts surrounding Claar's ballot, I conclude that the first ballot, completed by Claar's wife, was properly voided. Given the undisputed facts adduced at the hearing, I find that the second ballot was the only ballot actually completed by Claar, and it should be opened and counted.

To sum up, I recommend, therefore, that both of the challenged ballots of Charles Jones Jr. and Dewayne Claar, be opened and counted, with a revised tally of ballots to then be issued.